

Continuation Application No.: 10/800,364
Parent Application No.: 09/810,815
Continuation Filing Date: March 12, 2004

EXHIBIT I

Declaration of Dr. Andreas Burgard

Under 37 C.F.R. §1.132

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, **ANDREAS BURGARD** declare and state that:

1. I am a resident of the Federal Republic of Germany.
2. I am a citizen of the Federal Republic of Germany.
3. I am a chemist having received a university degree in chemistry (equivalent to MS in chemistry) from Johannes Gutenberg University in Mainz, Germany.
4. Since 1998 I have been employed with Nutrinova Nutrition Specialties & Food Ingredients, GmbH ("Nutrinova"). My research for Nutrinova has generally focused on artificial sweeteners. For the past 6 years my work has focused on products incorporating acesulfame - k , particularly pharmaceutical products.
5. I consider myself qualified by my knowledge of chemistry and by my years of experience in these technical fields for more than 12 years.

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6. I am a co-inventor of both of the above-captioned United States Patent Applications, i.e. the parent application Serial No. 09/810,815 and continuation application Serial No. 10/800,364, and therefore have personal knowledge of their subject matter.
7. I have read and understand the final Official Action mailed on September 15, 2003 ("the Office Action") and the Advisory Action mailed on January 20, 2004 ("the Advisory Action") within the parent application.
8. I understand that Claims 1, 3, 4, 10 and 11 stood rejected within the parent application as being unpatentable over WO 99/04822 ("WO 822") in view of United States Patent No. 4,753,800 to Mozda ("Mozda").
9. WO 822 is merely directed to 1:1 salts of a sweetener and an unpleasant tasting pharmaceutical.
10. Mozda is directed to an extensive list of medicaments that are incorporated into a melted edible wax and mixed with magnesium aluminum silicate.
11. In contrast to WO 822 and Mozda, the claimed invention includes nicotine and sweetener in a molar ratio of 1:2. The sweetener molecules can be identical or different. The claimed compounds are highly advantageous, masking the nicotine taste within the resulting compounds for at least 5 minutes.

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12. As shown in the above-referenced continuation application on Page 11, lines 1 through 12, compounds including a 1:1 ratio of nicotine to sweetener mask the nicotine taste for only a very short duration, e.g. about 10 seconds. In contrast, the claimed compounds, including a 1:2 ratio of nicotine to sweetener, mask the nicotine taste for a significantly longer period of time, e.g. for 5 minutes or more.
13. The Office Action appears to equate sweetness intensity with prolonged sweetness. Sweetness intensity and prolonged sweetness are not interchangeable phenomenon, however.
14. In contrast to the position urged within the Office Action, it is altogether unexpected that by increasing the molar ratio of nicotine to sweetener from 1:1 to 1:2, such a prolonged masking would be provided. More particularly, it highly surprising that the increase in sweetener molar ratio from 1:1 to 1:2 results in at least a 30 times longer masking effect, i.e. a masking for at least 5 minutes.
15. There further would have been no motivation from the cited art to have even attempted an increase in the molar ratio of the sweetener. The nicotine compounds of the claimed invention are unusual in their lengthy ingestion period. In contrast, the vast majority of

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pharmaceuticals are ingested very quickly, e.g. syrups and the like. WO 822 is directed to such conventional, quickly ingested pharmaceuticals. The 1:1 ratio of pharmaceutical to sweetener ratio of WO 822 would have been adequate to mask the taste of the pharmaceutical for such short durations. Mozda's working examples are similarly based on quickly ingested compositions. Accordingly, the references provide no motivation to have increased the sweetener to pharmaceutical ratio to 2:1 to induce prolonged masking, as recited in the claimed invention.

16. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the application or any patent issued thereon.

April 21, 2004

Date

Andreas Burgard
Dr. Andreas Burgard